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Total Number of Pages in This Submission

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Application Number	10/701,219
Filing Date	November 4, 2003
First Named Inventor	Jerry E. Elliott
Art Unit	3679
Examiner Name	Aaron M. Dunwoody
Attorney Docket Number	CAS 10/CIP(2)

ENCLOSURES (Check all that apply)

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- Request for Withdrawal of Holding of Abandonment
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Emrich & Dithmar LLC		
Signature	<i>Thomas E. Hill</i>		
Printed name	Thomas E. Hill		
Date	Septemebr 12, 2006	Reg. No.	28,955

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Jerry E. Elliott

Serial No: 10/701,219

Filed: 11/04/2003

Title: ADJUSTABLE PIPE REPAIR CLAMP
INSTALLATION TOOL

Attorney's Docket No.: 10/CIP(2)

Confirmation No: 5156

Group Art Unit: 3679

Examiner: Aaron M. Dunwoody

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Cynthia Ortiz

CYNTHIA ORTIZ

MAIL STOP NON-FEE AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR WITHDRAWAL OF HOLDING OF ABANDONMENT
AND RESETTING OF THE DATE TO RESPOND TO FINAL REJECTION**

Sir:

This is a request for withdrawal of a holding of abandonment in the subject application and for a resetting of the date to file an appeal or a request for continued examination (RCE).

Following initial examination of this application, the Examiner issued a first Office Action on June 22, 2005 imposing a restriction requirement. On July 6, 2005, Applicant filed Amendment A in response to this restriction requirement traversing the restriction requirement, while electing to prosecute claims 1 - 25. The Examiner issued a second Office Action on September 8, 2005 objecting to the drawings, rejecting claims 1 - 26 as anticipated by U.S. Patent No. 1,885,128 to

Montgomery, and provisionally rejecting claims 1 - 26 for double patenting on the basis of Applicant's co-pending Application Serial No. 10/608,290 directed to another embodiment of Applicant's invention. This latter application, which is being handled by the same Examiner, is the subject of an appeal. In response, Applicant filed Amendment B on November 10, 2005 amending independent claims 1 and 26 and traversing the objection to the drawings, the double patenting rejection, and the rejection based on Montgomery. The Examiner then issued a third Office Action on January 31, 2006, again objecting to the drawings and maintaining the provisional double patenting rejection. The Examiner withdrew the rejection based on Montgomery, while issuing a final rejection of all of pending claims 1 - 26 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,445,286 to Bosco in view of U.S. Patent No. 1,619,749 to Murray. In response to this final rejection, Applicant filed Amendment C on April 27, 2006, pointing out that the Examiner's objection to the drawings was the subject of a similar objection in Applicant's aforementioned co-pending application and that the objection was withdrawn in the latter application and that the double patenting rejection was also withdrawn in Applicant's co-pending application. Amendment C also pointed out differences between the pending claims and the new cited references to Bosco and Murray. No changes were made to the claims.

Following the filing of Amendment C, the Examiner states in an Interview Summary that he attempted to contact Applicant's representative by telephone on June 11, 2006 "to inform him that the request for reconsideration has been received," but left no message. Applicant's representative did not discuss with the Examiner the status of Amendment C filed after the final

rejection, nor was Applicant's representative informed either in writing or verbally as to whether Amendment C had been entered. The next communication with the Examiner regarding this application was a Notice of Abandonment issued by the Examiner on September 1, 2006. For reasons set forth in the following paragraphs, Applicant respectfully requests that the holding of abandonment of the subject application be withdrawn, that applicant be advised as to whether Amendment C has been entered in this application, and that the time to file an appeal or a RCE be extended to thirty (30) days from issuance of a response to this request.

It is respectfully submitted that the Examiner did not follow procedures set forth in the manual of Patent Examination Procedure (MPEP) in the handling of Applicant's Amendment C. For example, the Examiner did not advise Applicant as to whether Amendment C was entered in the present application. The Interview Summary received by Applicant's representative does not indicate whether or not Amendment C was entered or was even considered by the Examiner. This Interview Summary merely states that "the request for reconsideration has been received." As stated in MPEP §714.13(III), Amendment C was entitled to receive "sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified." Moreover, in the event that proposed Amendment C did not place the application in better form for appeal, or in condition for allowance, Applicant was entitled to be "promptly informed of this fact, whenever possible, within the statutory period." Amendment C made no changes to the pending claims, but did attempt to remove the objection to the drawings, while also providing arguments for the withdrawal of the double patenting rejection as well as the prior art

rejection of the pending claims. As stated above, two of these issues were withdrawn by this same Examiner in Applicant's co-pending application. Applicant should have been notified if certain portions of the Amendment C were acceptable as placing the application in better form for appeal or as complying with objections or requirements as to form. See MPEP §714.13(III).

MPEP §714.13(III) further states that an Advisory Action should be used by an examiner to acknowledge receipt of a reply from an applicant after final rejection where such reply is prior to filing of an appeal brief and does not place the application in condition for allowance. The Advisory Action form has been devised to advise applicants of the disposition of any proposed amendments to the claims and of any argument not placing the application in condition for allowance. In the present case, the Examiner did not issue an Advisory Action informing Applicant of the disposition of Amendment C.

MPEP §714.13(III) further requires that an amendment timely filed after a final rejection be immediately considered by the examiner to determine whether it places the application in condition for allowance or in better form for appeal. The examiner is expected to turn in a response to an amendment after final rejection within ten (10) calendar days from the time the amendment is received by the examiner, which in the present case was May 2, 2006. A reply to an amendment after final rejection should be mailed within thirty (30) days of the date the amendment is received by the Patent and Trademark Office (PTO). In the present case, Applicant did not receive any reply to Amendment C received in the PTO on May 2, 2006. MPEP §714.13(III) further states that "Prompt notice to applicant is important because it may avoid an

In re appln. of Jerry E. Elliott
Serial No. 10/701,219
Page 5

unnecessary appeal and act as a safeguard against a holding of abandonment. Every effort should be made to mail the letter before the period for reply expires." In the present case, no notice or letter was issued by the Examiner to Applicant regarding the entry of Amendment C filed in response to the final rejection of January 31, 2006.

For the reasons discussed above, Applicant respectfully requests that the holding of abandonment in the present application be withdrawn and that the date for responding to the final rejection be reset to thirty (30) days following the issuance of the requested withdrawal of the Notice of Abandonment.

Respectfully submitted,

Date: SEP. 12, 2006

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